ABU BIN AHMAD

v.

DAHARAH BT. AB. AZIZ & 2 ORS.

HIGH COURT MALAYA, ALOR SETAR
TUAN K.N. SEGARA JC
[GUAMAN NO. 23-47-92]
17 APRIL 1995

SMALL ESTATES: *Distribution of small estates - Existence of collateral dispute between plaintiff and beneficiaries of the estate - Directions given by Collector in respect of the claim - Plaintiff to institute proceedings in the High Court - Plaintiff failed to comply with directions - Collector ordered distribution of estate - Whether order made by Collector a nullity - Action later instituted in High Court - Whether Court has jurisdiction to hear the suit - Whether the plaintiff's act an abuse of the process of the Court.*

The plaintiff claimed to be the sole beneficiary to the estate of Mohamad bin Mohamad Saman (Mohamad) who died leaving a piece of land known as SPK 6606 Lot 803 Mk. Gelong, Kubang Pasu, Kedah (the property) and the defendants were the children and beneficiaries of one Che Mah bt. Jusoh (Che Mah), deceased. The defendants alleged that Che Mah, deceased had bought the property from Mohamad and they were therefore entitled to the property. The plaintiff filed a petition for distribution of the said property before the Collector of Pejabat Tanah, Kubang Pasu and at the hearing of the petition, the 1st defendant also asserted claim to the said property. At the end of the hearing on 9 March 1987, the Collector gave leave to issue a letter of administration to the 1st defendant and leave for the plaintiff to institute proceedings in the High Court. However, the plaintiff took no steps to comply with the Collector's direction and no appeal was made against the order and direction. On 18 January 1989, the Collector proceeded to finally dispose of the distribution suit pursuant to powers vested in him and the said property was distributed to the defendants. The plaintiff then filed a suit against the defendants praying, *inter alia*, for a declaration that the order made by the Collector was a nullity and for an order that the letter of administration be struck off.

Held:

[1] The plaintiff's legal right was to appeal under s. 29 of the Small Estates Distribution Act, 1955 (Act 98) against the direction and orders made by the Collector. The plaintiff's attempt to seek redress by declaratory reliefs well after the time limited for appeal against the Collector's order had lapsed is an abuse of the process of the Court.

[2] The orders and directions made by the Collector on 18 January 1989 was consequential to the proceedings and order made on 9 March 1987 and therefore was not a nullity as it was well within his authority and jurisdiction under s. 14(4) of the Act.

[Plaintiff's claim dismissed with costs].

Case referred to:
Fatimah binti Mat Akir & Anor. v. Sharifah binti Haji Ahmad & Ors. [1977] 1 MLJ 106 ***(refd)***

Legislation referred to:
Small Estates Distribution Act 1955, ss. 4, 8, 13(4), 14(4), (5), 29

For the plaintiff - Kartar Singh; M/s. Kartar Singh Dhaliwal & Co.
For the defendant - Che Zainol Rashid b. Che Ahmad; M/s. Ahmad Farid & Associates

JUDGMENT

K.N. Segara JC:

In this civil suit, the plaintiff Abu bin Ahmad, claims to be the sole beneficiary to the estate of Mohamad bin Mohamad Saman who died leaving a piece of land known as SPK 6606 Lot 803 Mk. Gelong, Kubang Pasu, Kedah (hereinafter referred to as the "said property"). The three defendants in this civil suit are the children and beneficiaries of one Che Mah bt. Jusoh, deceased. The defendants allege that Che Mah bt. Jusoh, deceased (who was their mother) had bought the said property from Mohamad bin Mohamad Saman, deceased and, therefore, as beneficiaries of the said Che Mah bt. Jusoh, deceased, they are legally and beneficially entitled to the said property.

The plaintiff filed a petition for distribution of the said property in Distribution Suit No. 96/1986 before the Collector at Pejabat Tanah, Kubang Pasu under s. 8 of the Small Estates Distribution Act, 1955 (Act 98) (hereinafter referred to as the "said Act"). At the hearing of the said petition conducted by the Collector on 9 March 1987, the 1st defendant, Daharah bt. Ab. Aziz also asserted a claim to the said property. At the conclusion of the hearing that day, the Collector made the following decision and order, obviously pursuant to the provisions under s. 13 and 14 of the said Act.

Keputusan:

Didapati berlaku collateral dispute di antara pemohon dan waris pembeli atas tanah SPK 6606 Lot 803 Mk. Gelong.

Perintah:

Di bawah s. 14 - dibenar beri surat kuasa tadbir kepada Daharah Aziz dan dibenar Abu bin Ahmad menuntut di Mahkamah Tinggi dalam masa dua bulan.

(See p. 6, plaintiff's bundle of agreed documents)

In order to appreciate why the Collector made the above order on 9 March 1987, one only has to peruse the notes recorded by the Collector at the hearing. For ease of reference I quote from the Collector's notes appearing at pp. 5 and 6 of plaintiff's bundle of agreed documents.

Pesaka: Mohamad bin Mohamad Saman
Mati: 1943
Pemohon: Abu bin Ahmad
Nilaian: RM72,000
C/Pesaka: Tiada
Bil Faraed: Bil(3) dlm. HPK/KP 96/86

Waris hadir
1. Abu Ahmad - K/P: 3382871

Turut hadir
2. Daharah bt. Ab. Aziz (pembeli) - K/P: 0767361.

Harta simati
1. SPK 6606 Lot: 803 Mk. Gelong

Abu bin Ahmad dalam keadaan sedar, cukup umur, waras akal fikiran mengaku, dan bersumpah dan bercakap benar, bahawa saya tinggal di Kampung Batas Mukim Temin Changloon, kerja kampung.

Simati adalah datuk saya, meninggal dunia di No. 25, Kg. Gelam Belakang Mada Jitra, Kedah.

Surat mati difailkan. Harta simati satu pucuk geran. Waris saya seorang sahaja. Hutang wasiat tiada. Belanja mati selesai.

Saya tahu tanah ini adalah hak datuk saya, tidak pernah dihebah dan dijual kepada sesiapa. Datuk saya tidak pernah jual kepada sesiapapun. Saya minta atas timbangan tuan.

Saya Daharah bt. Ab. Aziz saya tinggal di Kampung Kubang Lembu, Mukim Jitra, kerja suri rumah.

Saya ingin nak cakap, tanah dibeli oleh ibu saya Che Mah bt. Hj. Jusoh yang tinggal di Kampung Kubang Lembu dibeli masa pemerintahan Jepun dengan harga RM7,300 sebanyak 10 relong.

Sekarang saya mahu menuntut tanah ini atas pembelian ibu saya daripada simati dan surat perjanjian jualbeli saya failkan. Ini sahaja saya nak cakap.

Saya Abu bin Ahmad sekali-kali tak bersetuju dengan cakap Daharah bt. Ab. Aziz. Sebab kalau datuk saya jual pada saya sebab apa tak ubah nama dalam geran. Arwah bapa saya pun tak pernah bagi tahu apa pun tentang tanah ini, tentang penjualan ini, dan saya sanggup bawa kes ini ke Mahkamah Tinggi. Saya akan ambil lawyer dan tuntut di Mahkamah Tinggi.

The plaintiff took no steps whatsoever, to comply with the Collector's direction to institute proceedings in the High Court, to determine the collateral dispute. The plaintiff did not also appeal against the order and direction made by the Collector on 9 March 1987, as provided for under s. 29 of the said Act.

In the above circumstances, on 18 January 1989, the Collector proceeded to finally dispose the Distribution Suit No. 96/86. Needless to say, he acted pursuant to the powers vested in him under s. 14(4) read together with s. 14(5) of the said Act. The Collector distributed the said property to the three defendants (see p. 8 of plaintiff's bundle of agreed documents). The plaintiff did not appeal against this order, at any time, under the provisions of s. 29 of the said Act.

The plaintiff contends that the order made by the Collector on 18 January 1989, in Distribution Suit No. 96/86, is a nullity, and, in the present civil suit filed on 9 July 1992 against the three defendants, has prayed for the following declarations and orders.

(a) Satu pengisytiharan bahawa perintah yang diperbuat oleh Pentadbir Tanah Daerah Kubang Pasu pada 18 Januari 1989 di dalam

Guaman Pembahagian No. 96/1986 berkaitan dengan harta pusaka Mohamad bin Mohamad Saman simati, adalah "a nullity";

(b) Satu perintah bahawa perintah Pentadbir Tanah Daerah bertarikh 18 Januari 1989 tersebut dibatalkan;

(c) Satu perintah bahawa segala wasilan-wasilan di dalam suratan hakmilik SPK: 6606 Lot: 803 Mk. Gelong, Kubang Pasu yang dipunyai oleh Mohamad bin Mohamad Saman simati tersebut, dibatal dan dibuangkan;

(d) Satu pengisytiharan bahawa defendan-defendan bukan waris-waris Mohamad bin Mohamad Saman simati tersebut;

(e) Satu perintah bahawa tanah SPK: 6606 Lot: 803 Mk. Gelong, Kubang Pasu, Kedah kepunyaan simati tersebut di "transmit" kan kepada plaintiff sebagai waris tunggal kepada simati tersebut.

(f) Kos guaman ini;

(g) Lain-lain perintah yang difikir patut dan wajar diberi oleh Mahkamah yang mulia ini.

Counsel for the defendants has raised a preliminary objection - namely that this Court has no jurisdiction to entertain the plaintiff's suit as the High Court's jurisdiciton in relation to the distribution of a small estate under the said Act is appellate and not original. I entirely agree with Counsel for the defendants. It is abundantly clear that the Collector shall have exclusive jurisdiction in respect of a small estate under s. 4 of the said Act. The authorities on this issue are clear and settled. The case of *Fatimah Binti Mat Akir & Anor. v. Sharifah Binti Haji Ahmad & Ors.* [1977] 1 MLJ 106, decided by the Federal Court, is crystal clear on the point.

The plaintiff's legal right, if any, was to appeal under s. 29 of the said Act against the directions and orders made by the Collector on 9 March 1987 and 18 January 1989. The plaintiff's attempt to seek redress by declaratory reliefs, well after the time limited for appeal against the Collector's order had lapsed, is an abuse of the process of Court.

The orders and directions made by the Collector on 9 March 1987 & 18 January 1989 are not a nullity. The order made on 18 January 1989 was consequential to the proceedings and order made on 9 March 1987.

The order and directions made by the Collector on 9 March 1987 was obviously made pursuant to s. 13(4) and 14(5) of the said Act which reads as follows:

> 13(4) If the nature of the case so requires the Collector shall, instead of or in addition to making a distribution order, grant letters of administration to such person or persons as he shall think fit, subject to such security as he may require and may in his discretion dispense with security. The letters of administration shall be subject to such limitations as the Collector may think fit to specify in the grant.
>
> 14(5) If the subject matter of the collateral dispute is immovable property or any right or interest therein registered in the name of the deceased as proprietor or co-proprietor and if at the date of the death of the deceased some other person was in occupation thereof and if the Collector is satisfied that, by reason of an agreement for sale of that property by the deceased, the deceased at the date of his death had no beneficial right or interest in the property, and if the beneficial right or interest is in dispute between two or more claimants then the Collector shall direct the persons claiming any beneficial right or interest in the property within two months of the date of the direction to institute proceedings in a Court with a view to the determination of the dispute by the Court and if no such proceedings are instituted within the period the Collector shall proceed to hear and determine the dispute in the same manner as a dispute referred to in sub-section (4).

The subsequent order made by the Collector on 18 January 1989 is the result of the provisions of s. 14(4) of the same Act, upon the failure of the plaintiff to institute proceedings in Court to determine the collateral dispute between the plaintiff and the 1st defendant, as directed by the Collector on 9 March 1987.

Section 14(4) of the said Act reads as follows:

> If in any collateral dispute the subject matter is immovable property of any value or any right or interest in that property, then, except in any case provided for by sub-section (5), the Collector shall proceed to hear and determine such dispute and may make such order thereon as may be just.

The proceedings held by the Collector on 9 March 1987 and 18 January 1989 must be considered together in order to determine whether the order made by the Collector on 18 January 1989 is a nullity. The order made on 18 January 1989 by the Collector cannot be read in isolation and out of context to the facts before the Collector. In the above circumstances, I rule the order made by the Collector on 18 January 1989 is not a nullity as it was well within his authority and jurisdiction under s. 14(4) of the said Act, to make the order. Nevertheless, the said order is certainly appealable under s. 29 of the said Act. The plaintiff, however, has failed to exercise his right of appeal.

In the above circumstances, the defendant's preliminary objection is upheld and the plaintiff's claim for declaratory reliefs and consequential orders is dismissed with costs.